2369.

# SUPREME COURT OF THE UNITED STATES,

## No. 201.

BENJAMIN H. LAMBERT & LEWIS McKENZIE, PLAINTIFFS,

vs.

WILLIAM GHISELIN.

CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT, U. S., FOR MARYLAND.

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J. & G. S. Gideon, Printers.

THE UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

At a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and forty-seven—

Present, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States; Upton S. Heath, judge of Maryland district; William L. Marshall, esquire, attorney; Mereau Forrest, esquire, marshal; Thomas Spicer, clerk.

Among other, were the following proceedings, to wit:

BENJAMIN H. LAMBERT & LEWIS MCKENZIE
vs.
WILLIAM GHISELIN.

Circuit court of the United States, for the district of Maryland.

Be it remembered, that this cause coming on to be tried, on this 18th day of November, anno domini 1847, before us, judges of said court:

The plaintiff in the above cause, having read in evidence, without objection, the bill of exchange described in the first count of the declaration, in the words and figures following, to wit:

*Bill of Exchange.*

[Stamp 75 cents.] *April* 21, 1846.

Ninety days after date pay to the order of William Ghiselin fifteen hundred dollars 00-100, value received, and charge the same to account of your ob't serv't, ROBERT GHISELIN.

To JOHN R. MAGRUDER & SON, *Baltimore*.

(Endorsed)—John R. Magruder & Son.
(Endorsed)—William Ghiselin, Lambert & McKenzie.

Pay to the order of C. C. Jamison, cash'r.
JOHN HOFF, *Cash'r*.

Together with the agreement of counsel in said cause, in the words following, to wit:

*Agreement.*

Mr. SPICER: File the within, to be used on the trial of the above cause, the same to all intents and purposes as if the original bill of exchange and protest were produced, the handwriting of the several parties being admitted.

R. J. BRENT, *for Plaintiffs*.
T. S. ALEXANDER, *for Defendants*.

I sign this agreement, with the understanding that, if at any time prior to 15th Oct'r, 1846, I shall require the originals, they shall be produced. TH. S. A.

And also the notarial protest, in the words and figures following, to wit:

*Protest.*

UNITED STATES OF AMERICA,
*State of Maryland, to wit:*

On this day, the twenty-third day of July, in the year of our Lord eighteen hundred and forty-six, at the request of the president, directors, and company of the Bank of Baltimore, bearers of the original bill of exchange, whereof a true copy is on the other side written, I, Samuel Fernandis, notary public, by letters patent under the great seal of the State of Maryland, commissioned and duly qualified, residing in the city of Baltimore, in the State aforesaid, went to the counting-house of John R. Magruder & Son, acceptors of said bill of exchange, and there exhibited the same and demanded payment thereof, the time limited for payment having expired; whereto a person in said counting-house answered, that said bill of exchange could not be paid.

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, as well against the acceptors, the drawer, and endorsers of the said bill of exchange, as all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages, and interest, suffered and to be suffered for the want of payment of the said bill of exchange, and addressed written notices thereof to the drawer and endorsers of the same; also informing them that they are held liable for the payment of exchange notices for all the parties sealed, directed to John Hoof, esq'r, cashier, Alexandria, Va., and put into the post office at Baltimore the same day.

Thus done and protested at the city of Baltimore aforesaid. In testimony whereof I have hereunto set my hand and affixed my seal notarial, the day and year aforesaid. [SEAL.]

SAM'L FERNANDIS,
*Notary public.*

*Evidence of Wm. H. Lambert.*

Then further gave in evidence, by William H. Lambert, a competent witness, that on the 24th day of July, anno domini 1846, he was the assistant clerk in the counting-house of the plaintiffs, who were then, and still are, doing business in Alexandria, now in the State of Virginia, under the name and style of Lambert & McKenzie; and that on the said 24th day of July, 1846, the witness saw enclosed in a letter addressed to the defendant, at Nottingham, Maryland, the original notice, whereof the paper marked A is a true copy.

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*District of Maryland, to wit:*

At a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and forty-seven—

Present, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States; Upton S. Heath, judge of Maryland district; William L. Marshall, esquire, attorney; Mereau Forrest, esquire, marshal; Thomas Spicer, clerk.

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*Copy of notice of protest.*

(Copy A.) BALTIMORE, *July 23d*, 1846.

Mr. WILLIAM GHISELIN: SIR: Please to take notice that Robert Ghiselin's bill of exchange on John R. Magruder & Son, for $1500, (by them accepted,) dated April 21st, 1846, and payable ninety days after date to your order, and by you endorsed, is delivered to me by the president, directors, and company of the Bank of Baltimore, to be protested for non-payment; and the same not being paid, is protested, and will be returned to the said president, directors, and company, and that you are held liable for the payment thereof.

SAM'L FERNANDIS,
*Notary public.*

That said witness on said day deposited the said letter enclosing the said notice in the said post office, at said Alexandria, in time to go in the mail of that day.

(Copy.) *Evidence of Capt. T. Travers.*

And the plaintiff further gave in evidence, by Captain Thomas Travers, a competent witness, that he arrived in his vessel at the port of Alexandria aforesaid, early in the morning of the said 24th day of July, 1846; and that immediately after his arrival at the wharf, the plaintiff, Lambert, inquired of him if he knew the residence of the defendant; to which said witness replied, Nottingham—that he resided at Nottingham, and a post office was kept there.

And further gave in evidence by said witness, that he had been engaged from the year 1821 to 1842, in sailing a vessel in which the plaintiffs were part owners, between Nottingham and Alexandria previous to 1842; that during said time no other vessel was engaged regularly in trading between said places, except a vessel commanded by one Isaac Wood, in which the plaintiffs were also interested; that after 1842 there was no vessel regularly trading between Alexandria and Nottingham, which last place is a small village on the head waters of the Pautuxent river, in Prince George's county, Maryland; and that up to the time when the witness ceased to trade there, the defendant resided in Nottingham, where he pactised medicine, and had kept house there, and the said Travers had never heard of his removal from thence; that he, the defendant, was raised in the immediate neighborhood of Nottingham, where his brother, Robert Ghiselin, and his mother and other relations resided.

And also further gave in evidence by said Travers, that he was, in July, 1846, well acquainted in Alexandria, and knows of no one in said town who was better qualified to furnish information, or was more likely to have furnished information, as to the residence of the defendant than himself; that in 1842 the vessel owned by the witness and Lambert & McKenzie, and commanded by witness, as well as the vessel commanded by Isaac Wood, ceased to trade between Alexandria and Nottingham, and commenced trading or running regularly between

Alexandria and Baltimore city, in which trade they have been ever since constantly engaged, as was well known to the plaintiffs; that since 1842 the witness had never been at Nottingham, nor seen the defendant.

*Evidence of Isaac Wood.*

The plaintiffs further gave in evidence, by Isaac Wood, a competent witness, that he has resided for a great many years in Alexandria, and is well acquainted with the inhabitants thereof, and he knows of no one in said town to whom the plaintiffs could have appplied for information as to the residence of the defendant more likely than Captain Travers to afford correct information, or himself, who was absent at the time.

*Cross examination of T. Travers.*

And said witness, Thomas Travers, on cross examination, repeated that he believed the defendant in 1842 resided in Nottingham, and was very confident that he had seen the defendant there on several occasions in the course of the year 1840, but could not affirm positively that he saw the defendant there at any time during the years 1839, or 1841, or 1842.

*Defendant's evidence, T. S. Alexander.*

And the defendant also proved, by Thomas S. Alexander, that he is well acquainted with the defendant, being connected with him by marriage, and knows the defendant moved from Nottingham in the summer of 1839; that he first went to the city of Annapolis, distant about 30 miles from Nottingham, proposing that he should remain there until he had found a place of permanent settlement, and that having purchased a farm on West river, he took up his residence there towards the end of 1839; that said witness had frequently been at the residence of defendant on West river, and from his (witness') knowledge of the surrounding country, would have been prepared to affirm that "West river" post office was the post office of defendant; and, moreover, that he has accompanied the defendant to the said named post office for his (defendant's) letters, and has frequently, prior to the making and endorsement of the bill on which this action is founded, been informed by said defendant that his post office was "West river"—that "West river" post office is within two miles of the residence of the defendant, and Nottingham is distant from said residence at least 12 miles; and on cross examination the said witness stated that defendant had relations residing in and about Nottingham, and witness was satisfied from statements of defendant and others, that defendant had visited said relations frequently since his removal in 1839, and that witness had seen him on several occasions with said relations.

*Evidence of J. R. Magruder, junior.*

And defendant likewise proved, by John R. Magruder, jun'r, one of the acceptors, that he is well acquainted with the defendant, being

his relation; and that John R. Magruder, senior, was at one time the commission agent of defendant; that shortly after the 23d July, 1846, (he is confident within a fortnight, and he believes it was within a week, thereafter) the plaintiff, Lambert, called at the counting-house of John R. Magruder & Son, the acceptors, and then and there inquired of the witness where the defendant's post office was; the said witness answered, "he believed it was West river, but was not certain, as John R. Magruder & Son were not at that time the agents of the defendant, and that he would go out and inquire of Battee & Sons, the defendant's agents at that time;" that witness accordingly went out, and being informed by Battee & Sons that *West river* was defendant's post office, he returned and communicated that fact to the plaintiff.

The drawer of the bill of exchange, upon which the present suit was brought, it was in proof resided near Nottingham, Prince George's county, Maryland, that the drawers and acceptors resided in the city of Baltimore, and the defendant at West river, Anne Arundel county, Maryland, and there was at this time a daily mail between Baltimore and Alexandria.

Upon the testimony above stated the question occurred, whether due diligence had been used by the plaintiffs, the holders of the bill, to give to the defendant, the endorser thereof, notice of the dishonor of said bill.

Upon which question the opinion of the judges being opposed, the point, upon the request of the plaintiffs' counsel, is hereby certified to the Supreme Court.

R. B. TANEY,
U. S. HEATH.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name and affix the seal of the said circuit court, this ninth day of December, in the year of our Lord one thousand eight hundred and forty-seven.

THO. SPICER, *Cl'k cir't c't.*

Filed 13 Jan'y, 1848.